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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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DEC 29 2010

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

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IN THE MATTER OF THE FORMAL  
COMPLAINT OF CHARLES J. DAINS AGAINST  
RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

1 The Estate of Charles J. Dains ("Dains Estate") hereby moves to consolidate Docket No.  
2 W-01808A-09-0137 with Docket No. W-01808A-10-0390. Consolidation of these dockets is  
3 appropriate under A.A.C. RI4-3-109(H) of the Arizona Corporation Commission's Rules of  
4 Practice and Procedure, as well as Rule 42(a), Arizona Rules of Civil Procedure.

5 **Docket No. W-01808A-09-0137**

6 In this Docket, the Dains Estate has filed a complaint against Rigby Water Company  
7 ("Rigby") alleging that Rigby has failed to refund amounts due under a Main Extension  
8 Agreement between these two parties. Determination of the amount owed and when it is to be  
9 paid are the central issues in this Docket. Testimony has been completed. Briefs were filed on  
10 December 15, 2010, and reply briefs are due on January 14, 2010.

11 **Docket No. W-01808A-10-0390**

12 On November 30, 2010, the Dains Estate moved to intervene in this Docket. On  
13 December 1, 2010, Rigby filed a response, stating that it does not oppose the Dains Estate's  
14 motion to intervene.

15 In this Docket, Rigby has applied for a Commission order approving a transfer of its  
16 assets and operations to the City of Avondale and canceling its Certificate of Convenience and  
17 Necessity. Rigby has agreed to be condemned and purchased by the City of Avondale at a price  
18 of \$2,560,000. Rigby's total remaining plant is service is just \$114,295.84. Liabilities are just  
19 \$253,073. Therefore, Rigby will receive an enormous windfall of almost \$2.2 million.

1 On October 22, 2010, the Utilities Division Staff ("Staff") docketed an Insufficiency  
2 Letter concerning Rigby's application. In the Insufficiency Letter Staff identified a number of  
3 deficiencies in Rigby's application that needed to be addressed before the application could be  
4 deemed sufficient for Commission processing.

5 Staff identified disposition of refunds due on Main Extension Agreements as an issue to  
6 be addressed in this proceeding. Staff Deficiency No. 5 asked: "Are there any refunds due on  
7 Main Extension Agreements? If yes, please explain the proposed disposition of refunds." In  
8 Rigby's Response to the Staff Insufficiency Letter, docketed November 12, 2010, Rigby  
9 responded:

10 Rigby Water Company is a party to one Main Extension Agreement. Under  
11 Rigby Water Company's agreement with the City, Rigby Water Company will  
12 continue to pay refunds to the developer for the remaining term of the Main  
13 Extension Agreement. The City will provide Rigby Water Company with an  
14 annual accounting of water sold to the affected connections and the associated  
15 income received by the City to permit the refund amount to be calculated.

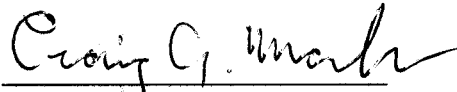
16 The Dains Estate is the successor in interest to the developer party in the Main Extension  
17 Agreement identified by Rigby in this response. The Dains Estate does not agree with Rigby's  
18 proposed resolution of the refund issue.

19 On December 20, 2010, the Commission Staff issued a Sufficiency Letter in this Docket.  
20 An initial procedural schedule has not yet been issued, so no party would be prejudiced by the  
21 requested consolidation.

22 **Requested Relief**

23 The Dains Estate asks that the Commission consolidate Docket Nos. W-01808A-10-0390  
24 and W-01808A-09-0137. The amount and disposition of refunds due to the Dains Estate is a  
25 common issue in both Dockets. Consolidation of the two Dockets will avoid inconsistent  
26 outcomes. Finally, Rigby could escape the Commission's jurisdiction if the Commission were to  
27 approve deleting Rigby's CC&N in Docket No. W-01808A-10-0390, before it determines the  
28 amount of refunds owed in Docket No. W-01808A-09-0137. This could make it difficult for the  
29 Dains Estate to enforce the Commission's decision in Docket No. W-01808A-09-0137.

1 RESPECTFULLY SUBMITTED on December 29, 2010.  
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